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Governor

FINANCE AND ADMINISTRATION CABINET
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WILLIAM M. LANDRUM III
Secretary

DANIEL P. BORK
Commissioner

In the matter of:

██████████ INC.

Contact: ██████████, Inc.

Attn: ██████████

FINAL RULING NO. 2016-44
December 9, 2016

Tangible Personal Property Tax Refund Request
January 1, 2012 through January 1, 2015

FINAL RULING

The Kentucky Department of Revenue ("the DOR") currently has pending a tangible personal property ad valorem tax refund request by ██████████ Inc. ("██████████") totaling \$██████████ for the assessment dates of January 1, 2012 through and including January 1, 2015. The amounts of the requested refunds are set forth in the chart below:

Tax Year	Tax	Interest as of 07/12/2016	Penalty	Total Refund Requested
January 1, 2012	(\$██████████)	(\$██████████)	\$██████████	(\$██████████)
January 1, 2013	(\$██████████)	(\$██████████)	\$██████████	(\$██████████)
January 1, 2014	(\$██████████)	(\$██████████)	\$██████████	(\$██████████)
January 1, 2015	(\$██████████)	(\$██████████)	\$██████████	(\$██████████)
Totals	(\$██████████)	(\$██████████)	\$██████████	(\$██████████)

██████████ is requesting a refund of the tangible personal property tax and interest liability paid for the 2012 through and including the 2015 tax years. ██████████ paid the tax and interest liability after the Department's Office of Property Valuation ("OPV") amended the originally filed tangible personal property tax returns for the periods in dispute.

On the originally filed tangible personal property tax returns, ██████████ listed their materials and supplies on Line 31: Merchants Inventory. OPV examined the filed returns and requested that the filed returns be amended to list their materials and supplies on Line 60: Other Tangible Property. OPV also requested that ██████████ list any other consumable supplies on hand at the January 1st assessment date on Line 60: Other Tangible Property.

██████████ was compliant and submitted a fixed asset listing in addition to the requested amended returns. ██████████ received assessments for the additional amounts of tax due resulting from the difference between the original and the amended returns. ██████████ subsequently paid the resulting assessments in full on ██████████, 2016. However, at the time of payment, ██████████ submitted a formal protest requesting a refund of the amount of liability for which the payment was remitted.

██████████ contends that the materials and supplies were correctly listed on Line 31: Merchants Inventory of the originally filed tangible personal property tax returns. Therefore, it asserts that it is due a refund of the assessment resulting from the listing of the materials and supplies as Line 60: Other Tangible Property.

Upon protest, the case was transferred to the Department's Division of Protest Resolution ("Protest Resolution"). Protest Resolution examined the protest and agreed with OPV regarding the listing of the materials and supplies on Line 60: Other Tangible Property. ██████████ was notified that Protest Resolution upheld the position of OPV in correspondences dated ██████████, 2016 and ██████████, 2016. ██████████ was given the opportunity to provide documentation to support the protest or to have a formal conference. No response nor documentation to support or substantiate the protest has been received to date.

At issue is whether ██████████ Inc. has complied with the requirements of KRS 131.110(1), which states in pertinent part:

The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the department may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable.

The Kentucky courts have held that this statutory provision imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide the DOR with "something more substantial than mere denials of tax liability." Eagle Machine Co., Inc. v. Commonwealth ex rel. Gillis, 698 S.W.2d 528, 530 (Ky.App., 1985). In order to make a valid protest, a taxpayer must "provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration." Id. at 529.

The courts have further held that KRS 131.110(1) is “mandatory in nature” and that failure to submit documentation as it requires will result in the taxpayer’s loss of the right to further review of the assessment or refund denial in question. Scotty’s Construction Co. v. Revenue Cabinet, 779 S.W.2d 234 (Ky.App., 1989). In both Scotty’s Construction and Eagle Machine, the taxpayers failed to provide any substantial information in support of their denials of tax liability, despite being given ample opportunity to do. The same is true in this matter.

As noted above, Protest Resolution requested in correspondences dated ██████████, 2016 and ██████████, 2016, that ██████████ provide documentation to support or substantiate its protest. However, ██████████ has failed to respond and to submit any such documentation that would allow the DOR a basis for reconsideration of the refund request.

Therefore, the Department properly denied ██████████, Inc.’s tangible personal property ad valorem tax refund requests totaling \$██████████.

This letter is the final ruling of the Department of Revenue.

APPEAL

For purposes of this final ruling, the terminology “Kentucky Board of Tax Appeals” and “Board” represent both the current Kentucky Board of Tax Appeals, as well as, the Kentucky Claims Commission that was established by Executive Order on August 8, 2016 and is expected to replace the current Kentucky Board of Tax Appeals on October 1, 2016.

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner's or appellant's position as to the law and facts; and
4. Include a copy of this final ruling with each copy of the petition of appeal.

The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,

DEPARTMENT OF REVENUE



Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED